

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43204 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

- =====
1. Vikki Kumar S/O Jagdish Mahto Resident Of Village- Barahpur Dih, P.S- Mokama, Distt- Patna.
 2. Deepak Kumar S/O Upendra Mahto Resident Of Village- Barahpur Dih, P.S- Mokama, Distt- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Jairam Mahto S/O Late Nanhu Mahto Residence of Village- Barahpur Dih, P.S- Mokama, Distt- Patna.

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 20-04-2017

Heard both sides.

The petitioners filed this petition under Section 482 of the Code of Criminal procedure (hereinafter referred as “the Code”) to quash the order dated 06.08.2012 whereby the learned Additional Chief Judicial Magistrate took cognizance of the offence under Sections 302, 120B and 34 of the Indian penal Code against the accused persons differing with the findings of the investigating officer.

On the basis of the fardbeyan of Jairam Mahto, Mokama P.S. Case No. 156 of 2011 was registered under Sections 302, 120B and 34 of the Indian Penal Code and Section 27 of the Arms Act.

The informant alleged that while his son Guddu Kumar



was taking books from his room, Vikki Kumar fired from his pistol which hit on the chin of Guddu Kumar. The informant rushed there on hearing the sound of firing and saw the accused persons fleeing away from there. The informant further alleged that other accused persons conspired and on their instigation the occurrence took place.

The police after investigation submitted the final form under Section 173(2) of the Code finding the accusation false, but the learned Additional Chief Judicial Magistrate vide order dated 06.08.2012 took cognizance under Section 302 and other sections of the Indian Penal Code differing with the findings of the investigating officer.

Learned counsel for the petitioners submits that the informant is not an eye witness of the occurrence. From perusal of the F.I.R. itself, it would appear that on hearing the sound of firing, the informant rushed to the place of occurrence and this fact shows that he is not an eye witness of the occurrence. It is further submitted that the deceased sustained injury on his chin. If a person fires from outside the room, it is impossible that on firing from outside the room, projectile will hit on the chin of the deceased. The Doctor also did not support the version of the informant. It is submitted that the supervising authority came to the conclusion that the deceased himself was playing with his country made pistol and the same got accidentally fired causing injury to the deceased.



From perusal of the order of the learned Additional Chief Judicial Magistrate, I find that the learned Additional Chief Judicial Magistrate has stated that on perusal of the case diary, there appears to be sufficient materials. The informant saw the accused Vikki Kumar fleeing away from the place of occurrence. No pistol was found near the place of occurrence. Had it been a case of accidental firing, the pistol would have been found on the place of occurrence itself.

In view of the provisions as contained in Section 190(b) of the Code, the Judicial Magistrate has got power to take cognizance of the offence/offences differing with the finding of investigating officer. At the time of taking cognizance, the Judicial Magistrate is to see on the facts, if not rebutted, whether prima facie case is made out or not. The materials could not be appreciated or evaluated at all its pros and cons at the stage of taking cognizance, which is required to be done at the time of finding guilt of a person. Accordingly, I do not find any merit in the quashing petition and the same is dismissed.

(Prabhat Kumar Jha, J)

Mishra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	16.05.2017
Transmission Date	16.05.2017

